



Michael D. Calmese
3046 N. 32nd Street Unit 321
Phoenix, Arizona 85382
(602)348-0964

Attorney Pro Se

FILED OCT 13 16:00 MUSIC-ORP

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ADIDAS AMERICA, INC., a Delaware
corporation,
Plaintiff and Counterclaim Defendant,
v.
MICHAEL D. CALMESE, a resident of
Arizona,
Defendant and Counterclaimant.

Civil No. CV-08-91-ST

**DEFENDANT'S OBJECTION
TO THE OCTOBER 7, 2009
OPINION AND ORDER**

Defendant emphatically objects to this Court's October 7, 2009 Opinion and Order statement casting doubt on Defendant Calmese's credibility concerning the time Calmese picked up his 2006 and 2007 taxes and Defendant emphatically objects to this Court's repeated misrepresentation that adidas' use of Defendant's trademark was in lower-case when in fact adidas' use of the mark in question was and is "PROVE IT" in all upper case which is identical to Defendant's use. See [Doc. 135].

It has been confirmed time and time again that adidas' use of the mark "PROVE IT" was in fact in upper case but yet the Magistrate Judge Stewart has again misrepresented in her October 7, 2009 Opinion and Order that adidas' use was in lower case. This is entirely inaccurate.

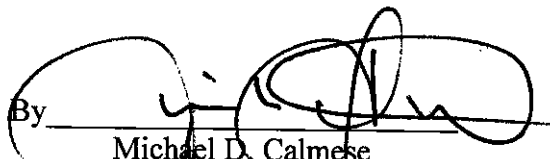
Regarding Defendant's taxes this Court has failed to realized that the date on Defendant's 2006 and 2007 federal tax documents are in fact both dated August 11, 2009 just two days before adidas and this Court received these copies only. According to the dates found on the rest of Defendant's tax documents for 2002-2005 indicates that they were prepared just after the 2006 and 2007 taxes were provided to adidas and filed under seal by this Court. Calmese mis-stated that on or about September 10, 2009 he had obtained a copy of his taxes from 2002-2007, when in fact Calmese obviously intended to state that on September 10, 2009 Calmese obtained of his taxes from 2002-2005. Understanding the Court makes note of this discrepancy, let it be well noted that Defendant Calmese objects under these circumstance. It is quite clear that Defendant picked up his 2002-2005 taxes on or about September 10, 2009 after first receiving his 2006 and 2007 taxes prior sending them to adidas on August 13, 2009. There is no real discrepancy therefore; there is no real reason to cast any doubt on Calmese's credibility. A true copy of Defendant Calmese's tax preparation receipts with the appropriate filing dates for his tax returns for 2002-2005 and 2006-2007 are attached hereto as Exhibit A. Moreover, attached as Exhibit B, is a true and accurate copy of the last page of the ORDER issued on September 8, 2009 in the matter Michael D. Calmese v. NIKE CV-2006-1959 in the District Court of Arizona. Again, see a full copy of the ORDER in the Nike matter attached to Calmese's Reply to Opposition – Exhibit E [Doc. 133]. In this Order on the last page on the last line it was ruled that, "While Calmese's pre-litigation and litigation correspondences were abrasive and threatening, Calmese did not lie or otherwise commit fraud". This Court should note that this ruling comes after three years of litigation and numerous depositions. This Court should therefore come to the same

conclusion as did the Honorable Judge Roslyn O. Silver in the Nike matter because it is basically the exact same evidence presented in both cases. Not to mention adidas has filed yet another identical declaratory lawsuit against Calmese as did Footlocker 3 years ago. See Calmese Reply to Opposition – Exhibit F [Doc. 133].

There is one such discrepancy that should cast doubt on adidas' credibility that this Court has yet to ruled on. Again, as this Court will learn through Calmese's Objections to Recommendations & Findings [106], that Exhibits [B, D, E and F] were produced by Defendant on July 14, 2008 as confirmed in the Supplemental Declaration of Jamie Rich *Id.*, ¶ 3. Also confirmed in adidas's Supplement Declaration of Jamie Rich is the fact that adidas committed perjury. See Supplemental Declaration of Jamie Rich ¶ 2, clearly states that a number of documents are missing but apparently adidas lied because as confirmed in their own Supplement Declaration of Jamie Rich ¶ 2, Ex. A. 190 of 432 and 191 of 432 are in fact true and accurate copies of documents bearing production number 107 and 108. Adidas falsely claims 107 and 108 were never produced by Defendant but yet and still here they are relabeled and mistakenly filed by adidas after claiming Calmese did not even produce these two documents. Defendant contends this is a real discrepancy and it should casts doubt on adidas' credibility. Again, as stated in the Nike matter, Calmese did not lie or commit fraud. The Court should note that if Calmese did not lie or commit fraud in the Nike case in the Arizona District Court then it is very safe and reasonable to conclude that Calmese did not lie or commit fraud in this case either.

DATED: October 9, 2009

Respectfully submitted,

By 

Michael D. Calmese
Attorney Pro Se Litigant
3046 N. 32nd Street Unit 321
Phoenix, Arizona 85018
(602)348-0964

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing

OBJECTION TO OPINION AND ORDER

was forwarded in accordance with the Federal Rules of Civil Procedure on

this the 9TH day of October, 2009, addressed as follows:

Stephen M. Feldman, OSB No. 932674
SFeldman@perkinscoie.com
PERKINS COIE LLP
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
Telephone: 503.727.2000
Facsimile: 503.727.2222

And

David K. Friedland (admitted *pro hac vice*)
dkfriedland@lfiplaw.com
Jaime S. Rich (admitted *pro hac vice*)
jrich@lfiplaw.com
Lott & Friedland, P.A.
355 Alhambra Circle, Suite 1100
Coral Gables, FL 33134
Telephone: 305.448-7089
Facsimile: 305.446-6191

Attorneys for Plaintiff and Counterclaim Defendant

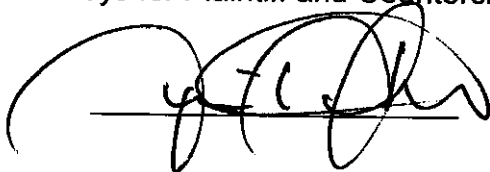
A handwritten signature in black ink, appearing to be "DK Friedland", written over a horizontal line.

EXHIBIT A.

Receipt

14799



No: 14799

10659 Grand Ave, #A12
Sun City, AZ 85351
(623) 875-4848

Date: 08/11/2009

For Year-Round Service: (623) 875-4848

Primary: CALMESE

MICHAEL

Primary SSN:

Spouse:

Spouse SSN:

Address:

Filing Status: Single

Phone: Day: (602) 348-0964

Eve:

Federal Tax Preparation	174.00
State Tax Preparation AZ	25.00
City/Local Tax Preparation	
Prior Years Tax Preparation	
Gold Guarantee	
Transmit Only	
Coupon	
Discount	
QUOTE PER RETURN FOR 5 YEARS OF RETURNS	(124.00)
Total Jackson Hewitt Fees	75.00
Sales Tax	
Bank Fees	
Total Withheld Fees	

Amount Paid: 75.00

Date Paid: 08/11/2009

Method: CREDIT CARD

COD: NO

Amount Due:

Date Paid: / /

Method:

Office #: 16214

Employee #: 200

As a Jackson Hewitt customer you received the following savings:

Total Discounts on Tax Preparation:	124.00
Basic Guarantee:	FREE

For your information, the following credit item claimed on your return helped reduce your federal tax liability by the following amount:

Earned Income Credit	293.00
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Federal and State Refund / Balance Due Information

Federal Balance Due	315.00	AZ	State Refund	25.00
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CALMESE, MICHAEL
2007
XXX-XX-3196

Receipt

No: **14798**

10659 Grand Ave, #A12
Sun City, AZ 85351
(623) 875-4848

Date: **08/11/2009**

For Year-Round Service: (623) 875-4848

Time: 9:00 AM - 1:00 PM ☐
1:00 PM - 5:00 PM ☒
5:00 PM - 9:00 PM ☐

Customer: Prior ☐
New ☒

Primary: **CALMESE**
Spouse:
Address:

MICHAEL

Primary SSN:
Spouse SSN:
Filing Status: **Single**

Phone: Day:

Eve:

Tax Preparation **213.00**
Pre-Paid Tax Preparation Fee.

Gold Guarantee

Transmit Only

Coupon.
Discount. **(138.00)**
QUOTE FOR 5 YEARS OF TAX RETURNS
School

Total Jackson Hewitt Fees **75.00**

Sales Tax.

Bank Fees

Total Withheld Fees

☐ RAL ☐ Money Now Loan (Standard) ☐ Money Now Loan (Profile) ☐ AR/BL ☐ AR (ETR) ☐ AR (Paper)
☐ Flex Loan ☐ ETR ☒ PAP

Federal Amount Due Payment Method: **Taxpayer Payment**

Amount Paid: **75.00** Date Paid: **08/11/2009** Method: **CREDIT CARD**
COD: **NO**
Amount Due: Date Paid: / / Method:

Employee #: **200** Office #: **16214**

Federal Balance Due **226** AZ State Refund **25**

Date Printed: 08/11/2009 F 11/08/06

2006

CALMESE, MICHAEL
14798
XXX-XX-3196

Receipt

C

2005



No: 15300

10659 Grand Ave, #A12
Sun City, AZ 85351
(623) 875-4848

Date: 08/11/2009

Time: 9:00 AM - 1:00 PM ☐
1:00 PM - 5:00 PM ☒
5:00 PM - 9:00 PM ☐

Customer: Prior ☒
New ☐

Primary: CALMESE
Spouse:
Address:

MICHAEL

Primary SSN:
Spouse SSN:
Filing Status: Single

Phone: Day:

Eve:

Tax Preparation 219
Pre-Paid Tax Preparation Fee.
Gold Guarantee

Transmit Only
JH Processing Fee.

Coupon.
Discount. (144)
QUOTE FOR 5 YEARS OF TAX RETURNS
School

Total Jackson Hewitt Fee 75

Sales Tax.
Bank Fee.

Total Withheld Fee.

☐ RAL ☐ Money NowSM Loan (Standard) ☐ Money NowSM Loan (Profile) ☐ ACR ☐ ETR ☐ Flex Loan ☒ PAP

Amount Paid: 75 Date Paid: 08/11/2009 Method: CREDIT CARD
COD: NO
Amount Due: Date Paid: / / Method:

Employee #: 200 Office #: 16214

Federal Refund 0 AZ State Refund 25

CALMESE, MICHAEL
15300
XXX-XX-3196

Date Printed: 08/11/2009

F 11/07/05

Receipt

No: **15301**10659 Grand Ave, #A12
Sun City, AZ 85351

Date: 08/11/2009

Time: 9:00 AM - 1:00 PM ☐
1:00 PM - 5:00 PM ☒
5:00 PM - 9:00 PM ☐Customer: Prior ☒
New ☐Primary: CALMESE
Spouse:
Address:

MICHAEL D

Primary SSN:
Spouse SSN:
Filing Status: Single

Phone: Day:

Eve:

Tax Preparation	193
Gold Guarantee	
Transmit Only	
Jackson Hewitt ACR Application	
Coupon	
Discount	118
QUOTE FOR 5 YEARS OF TAX RETURNS	
Miscellaneous	
School	
Total Jackson Hewitt Fee	75
Sales Tax	
Bank Withheld Fee	
State Document (Stamp) Tax	
Total Withheld Fee	

☐ RAL ☐ Money Now ☐ ACR ☐ ETR ☐ Flex Loan ☒ PAP

Federal Refund Disbursement Method: IRS Check

Amount Paid: 75	Date Paid: 08/11/2009	Method: CREDIT CARD
COD: NO		
Amount Due:	Date Paid: / /	Method:

Employee #: 200

Office #: 16214

Federal Refund	29	AZ	State Refund	25
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CALMESE, MICHAEL D
15301 527-99-3196

2004

Receipt

C

2003



No: 15304

10659 Grand Ave, #A12
Sun City, AZ 85351

Date: 08/18/2009

 Time: 9:00 AM - 1:00 PM ☒
 1:00 PM - 5:00 PM ☐
 5:00 PM - 9:00 PM ☐

 Customer: Prior ☒
 New ☐

 Primary: CALMESE
 Spouse:
 Address:

MICHAEL D

 Primary SSN:
 Spouse SSN:
 Filing Status: Single

Phone: Day:

Eve:

Tax Preparation.	217
Gold Guarantee.	
Transmit Only.	
Jackson Hewitt ACR Application.	
Coupon	
Discount	142
Miscellaneous.	
School	
Total Jackson Hewitt Fee	75
Sales Tax	
Bank Withheld Fee	
State Document (Stamp) Tax	
Total Withheld Fee	

☐ RAL ☐ Money Now ☐ ACR ☐ ETR ☐ Flex Pay Loan ☒ PAP

Amount Paid: 75	Date Paid: 08/18/2009	Method: CREDIT CARD
COD: NO		
Amount Due:	Date Paid: / /	Method:

Employee #: 600

Office #: 16214

Federal Refund

0 AZ State Refund

25

 CALMESE, MICHAEL D
 15304 527-99-3196

Receipt



No: 15303

10659 Grand Ave, #A12
Sun City, AZ 85351

Date: 08/18/2009

 Time: 9:00 AM - 1:00 PM ☒
 1:00 PM - 5:00 PM ☐
 5:00 PM - 9:00 PM ☐

 Customer: Prior ☐
 New ☒

 Primary: CALMESE
 Spouse:
 Address: 1

MICHAEL

 Primary SSN:
 Spouse SSN:
 Filing Status: Single

Phone: Day:

Eve:

Tax Preparation.	217
Gold Guarantee.	
Transmit Only.	
Jackson Hewitt ACR Application.	
Coupon.	
Discount.	142
Miscellaneous.	
School.	
Total Jackson Hewitt Fee.	75
Sales Tax.	
Bank Withheld Fee.	
State Document (Stamp) Tax.	
Total Withheld Fee.	

☐ RAL ☐ ACR ☐ ETR ☒ PAP ☐ Money Now

Amount Paid: 75	Date Paid: 08/18/2009	Method: CREDIT CARD
COD: NO		
Amount Due:	Date Paid: / /	Method:

Employee #: 600

Office #: 16214

Federal Refund

0 AZ State Refund

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 CALMESE, MICHAEL
 15303 527-99-3196

2002

EXHIBIT B.

1 the Court's attention all the matters which he has litigated if he had an ulterior bad-faith
2 motive when he filed them.

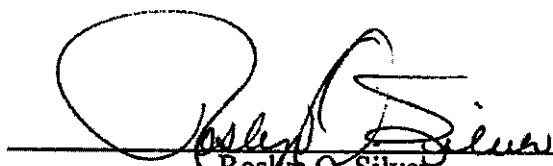
3 Given the evidence presented, Defendant has not carried the burden to show § 1117(a)
4 sanctions are appropriate. However, Defendant's failure to meet the burden does not excuse
5 Plaintiff's conduct, which came perilously close to warranting § 1117(a) attorneys' fees.
6 Further, the alleged improprieties concerning affidavit preparation, if true, and Plaintiff's
7 threatening correspondences may otherwise be sanctionable conduct, but not at this juncture.

8
9 Accordingly,

10 **IT IS ORDERED** Plaintiff's Motion for Reconsideration (Doc. 123) **IS DENIED**.

11 **FURTHER ORDERED** Defendant's Motion for Award of Attorneys' Fees (Doc.
12 122) **IS DENIED**.

13
14 DATED this 8th day of September, 2009.

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25 Roslyn O. Silver
26 United States District Judge
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